

**) Natural Resources Commission**  
**) Administrative Cause No.: 14-102C**

## 1

As a consequence of the Hendricks Circuit Court Order, the Commission, on September 4, 2014 circulated letters to state and local government agencies for comment.

**B. Summary of Evidence Received at Public Hearing**

**Petitioner and Supporting Evidence**

A public hearing was held on October 2, 2014, as scheduled pursuant to the Court's Order, IC 14-33-2-18 and IC 14-33-15 in the Hendricks County Government Center, 355 South Washington Street, Meeting Room 4 and 5, Danville, Indiana. On September 3, 2014, notice of the public hearing was published in the *Hendricks County Flyer*, a newspaper of general circulation in Hendricks County. The Notice of Public Hearing, as published in the *Hendricks County Flyer*, listed "Meeting Room 3"; however, due to scheduling conflict, the Commission's public hearing was moved to Meeting Rooms 4 and 5. Notices were placed on the entrances to Meeting Room 3 directing interested persons to Meeting Rooms 4 and 5.

Jennifer Kane, Hearing Officer conducted the public hearing. She gave a brief overview of the conduct of the public hearing. After the brief remarks, Kane called the Petitioners' attorney, Alan M. Hux.

Alan Hux introduced the following exhibits:

- **Petitioners' Exhibit A**, Petition for the Dissolution of the Raceway Water Conservancy District
- **Petitioners' Exhibit B**, Accountant's Compilation Letter, Raceway Water Conservancy District's Balance Sheet as of August 31, 2014, and Income Statement ending August 31, 2014 and December 31, 2013

Hux introduced persons to testify in favor of the proposed dissolution of the Raceway Water Conservancy District (the "District"). Their testimony is summarized as follows:

Timmy J. Shrout, stated that he has served as Chair of the District since the District's establishment in 1996. He affirmed the District was formed for the purposes of: (1) providing for the collection, treatment, and disposal of sewage and other liquid wastes; (2) providing water supply, including treatment and distribution, for domestic, industrial, and public use; and (3) developing forests, wildlife areas, parks, and recreational facilities, if feasible, in connection with beneficial water management. Shrout stated that the District lost its benefit regarding the

purpose of providing for the collection, treatment, and disposal of sewage and other liquid wastes, because the District sold its sewer facilities to the Hendricks County Regional Sewer District (the "HCRSD"). He affirmed that the transaction transferring the sewer facility assets to the HCRSD was the final obligation of an agreement between the District and the HCRSD. Shrout noted that the agreement was included in the District Plan approved by the Department of Natural Resources on December 9, 1997, and filed with the Hendricks Circuit Court on January 30, 1998. Shrout affirmed that the District has not fulfilled its purpose for providing water supply due to Indianapolis Water Company, now Citizen's Energy Group, providing water service to the District freeholders at a cost lower than what the District would have needed to charge its freeholders. Shrout affirmed that the Wynbrooke Homeowner's Association has assumed the responsibilities and the costs of maintenance of the parks the District constructed. He also affirmed that the District Board and the Homeowner's Association Board believe that it would be more cost effective for the Homeowner's Association to assume the costs of operation and maintenance of the parks within the District rather than having those obligations remain with the District. Shrout affirmed that the District does not have any bonded indebtedness or notes outstanding. He also affirmed that the District has sufficient finances to terminate the District's activities and pay any final expenses. Shrout stated that the District Board has voted to transfer any remaining District funds to the Wynbrooke Homeowner's Association.

David K. Pasotti, stated that he currently serves as the Financial Clerk for the District and is familiar with and responsible for the District's books and accounts. He affirmed that the District does not have any bonded indebtedness or notes outstanding. Pasotti affirmed that the District has sufficient funds to pay all costs and expenses incurred with the dissolution of the District. He also affirmed that the District has sufficient funds to terminate District activity. Pasotti affirmed that the District has paid all its financial obligations except for the expenses incurred through the process of dissolution. He stated that the District, after payment of the dissolution expenses, approximately \$30,000 to \$35,000 would be transferred to the Wynbrooke Homeowner's Association. Pasotti explained that page two of Petitioners' Exhibit B provides the District's Balance Sheet as of August 31, 2014, which showing Total Current Assets as \$61,582.73 (cash) and Total Current Liabilities as \$0.

### **C. Written Comments**

Jason Riggs, Vice President of the Wynbrooke Homeowner's Association, 11711 North College Avenue, Suite 100, Carmel, Indiana, filed on September 19, 2014, the following correspondence:

September 18, 2014

Hearing Officer  
Natural Resources Commission  
Division of Hearings  
100 North Senate Avenue Room N501  
Indianapolis IN 46204-2200

In re: Dissolution of Raceway Water Conservancy District

To Whom it May Concern:

Because of previous commitments I am unable to attend the scheduled hearing, but I hope you will consider this letter in forming your recommendation concerning the dissolution of the Raceway Water Conservancy District.

The undersigned is Vice President of the Board of Directors (Board) of the Wynbrooke Homeowner's Association (HOA). The Board, by unanimous consent, authorized me to submit this letter on behalf of the HOA. The HOA covers the same area as the boundaries of the Raceway Water Conservancy District ("District") and fully supports the Dissolution of the District. Because the HOA is of the opinion the District has lost the District's benefits, the HOA spearheaded the effort to collect the necessary signatures to present the Petition for Dissolution to the court.

The HOA cites the following in support of the District's dissolution:

- (1) The District sold its sewer assets to the Hendricks County Regional Sewer District thereby causing the District to lose its benefit of providing for the collection, treatment and disposal of sewage and other liquid waste.
- (2) The District never provided water supply, including treatment and distribution for domestic, individual and public use since the public water supply was provided by the Indianapolis Water Company (now Citizen's Energy Group). Therefore the District has lost its purpose of providing water.
- (3) The HOA has assumed the responsibility for the common areas (parks) located within the boundaries of the District. The HOA is of the opinion it is more economical for the volunteer HOA to provide for the maintenance of the common areas (parks) rather than pay the expenses of the District.

The District has indicated the excess funds that the District has after the dissolution is complete will be transferred to the HOA for the benefit of the residents of Wynbrooke. The HOA fully supports this commitment since the District's freeholders will be refunded the excess monies paid to the District after all expenses are paid.

Yours truly,

Jason Riggs, Vice President  
Wynbrook Homeowner's Association

## **II. AGENCY COMMENTS**

Indiana Department of Environmental Management, Lynne Newlon, Senior Environmental Manager, Office of Water Quality/Surface Water, Operations & Enforcement, contacted the Hearing Officer by telephone on September 25, 2014, informing the Hearing Officer that the Department of Environmental Management has no concerns with the dissolution of the

District. Newlon also noted that the Hendricks County Regional Sewer District “is in good standing” with the Department of Environmental Management.

Department of Natural Resources, Division of Water, Michael W. Neyer, P.E., Director, Division of Water, filed on October 15, 2014, the following memorandum:

**Date: October 16, 2014**

**To: Jennifer Kane, Division of Hearings  
Natural Resources Commission**

**From: Michael W. Neyer, P.E.  
Director, Division of Water**

**RE: Dissolution of the Raceway Water Conservancy District**

On June 25, 2014, a petition for the dissolution of the Raceway Water Conservancy District was filed in Hendricks Circuit Court under Cause Number 32C01-9508-MI-194.

An order referring the petition to the Natural Resources Commission (NRC) was signed by the Judge Pro Tem for the Hendricks Circuit Court on August 20, 2014. The petition which was filed pursuant to IC 14-33-15-1 indicates that the District be dissolved due to lack of benefit. A copy of the petition was forwarded to the Division of Water for review and comment.

#### Background

The Raceway Water Conservancy District (Raceway) is located in the eastern portion of Hendricks County, adjacent to Marion County, and consists of approximately 230 acres. Raceway was ordered established on January 30, 1996 for the purpose of providing water supply, including treatment and distribution for domestic, industrial and public use. Necessity for the creation of Raceway was the need to provide safe, reliable and cost effective water service for the future residents because the construction of approximately 550 homes within the boundaries that had been approved by the Hendricks County Zoning Board. At the time of establishment, the water distribution system was to be connected to the Indianapolis Water Company and water would be purchased at the wholesale rate. Eventually service to the freeholders by the Indianapolis Water Company did become economically feasible and the need to carry out the purpose of providing water supply was eliminated. However it became evident as plans were initiated that the development of a park and ponds in conjunction with water management activities, was feasible and necessary. Additionally the Board determined that there was a need for reliable and economical sewage disposal. The Board upon request of the required percentage of freeholders passed resolutions to add purposes. A petition was filed with the Hendricks Circuit Court to add two (2) purposes to the district. On May 9, 1996, Raceway added the purposes of:

- developing forests, wildlife areas, parks and recreational facilities in connection with beneficial water management, and
- providing for the collection, treatment and disposal of sewage and other liquid wastes.

The Board believed there were better alternatives to the construction of the District's own treatment plant with the necessary treatment capabilities. Thus discussions were initiated with close by entities (City of Indianapolis and Hendricks County Wastewater, LLC) to determine if either would consider treatment of sewage generated within the boundaries of Raceway. On October 13, 1997, Raceway entered into a Wastewater Service Agreement with the Hendricks County Regional Sewer District (HCRSD) for the collection, treatment and disposal of wastewater produced within the established boundaries. The HCRSD had a service agreement with Hendricks County Wastewater LLC who was also a party to the Wastewater Service Agreement.

The Wastewater Service Agreement was part of the District Plan submitted to the Department of Natural Resources in November 1997 for review. On December 9, 1997, the District Plan was approved by the Department of Natural Resources, Division of Water.

#### Authority

Chapter 15, Section 1 of the Indiana Conservancy District Act (IC 14-33), "Dissolution Due to Loss of Benefit", states:

"A district may be dissolved by the same procedure used to establish the district. The petition must set forth the change of circumstances that causes the district to lose the district's benefit."

Chapter 15, Section 5 further states:

"The court may not dissolve a district if the district has bonds or notes outstanding."

#### Summary of Evidence

Raceway's loss of benefit is three-fold:

- 1) Because the Indianapolis Water Co. (currently Citizen's Energy Group) provided water to the freeholders there was never any necessity or benefit for Raceway to provide this service.
- 2) Raceway's Agreement gave HCRSD the option to buy the sewer facilities upon repayment of Raceway's loans and reimbursement of certain oversizing costs plus interest. The HCRSD exercised its option and reimbursed Raceway the costs for oversized improvements to the sewer system plus interest, thus making the purpose of providing for the collection, treatment and disposal of sewage unnecessary.
- 3) Wynbrooke Homeowners Association (HOA) which represents the freeholders of Raceway has assumed responsibility for the parks and recreation facilities in the District and therefore the purpose of developing forests, wildlife areas and parks has no benefit.

According to Raceway's Petition signatures of 202 freeholders within the boundaries of the District were obtained in support of the dissolution. This represents more than the

thirty (30%) of the freeholders needed to initiate the proceedings of Raceway's dissolution.

The Petition for Dissolution was filed on June 25, 2014 in the Hendricks Circuit Court.

Raceway has sufficient funds available to pay all claims, legal fees and costs associated with the dissolution of the District.

The Petition filed for dissolution indicates that all bonds or notes of Raceway have been paid.

Testimony at the October 2, 2014 public hearing indicated that Raceway entered into an Agreement with the HCRSD concerning the collection, transportation and treatment of all wastewater generated within the boundaries of Raceway.

The HOA covers the same area as Raceway and they have taken responsibility for the parks and recreational areas used by the homeowners.

Staff from the Indiana Department of Environmental Management indicated to the NRC that the HCRSD is in good standing and that agency does not object to the dissolution.

The Indiana Utility Regulatory Commission (IURC) was invited to comment on the dissolution by the NRC. At the time this report was prepared the Division of Water had not received anything for inclusion.

Raceway's Chairperson, Timothy Shrout indicated at the public hearing held on October 2, 2014 that the District had lost benefit and more than 30% of the freeholders signed the petition for dissolution. Additionally Mr. Shrout stated that the District has funds to pay all final invoices and expenses.

With respect to the District's financial obligations, according to testimony at the October 2<sup>nd</sup> public hearing, Raceway has no debts or notes. David Pasotti, Financial Manager indicated there are sufficient funds to pay all expenses. Additionally upon dissolution, it is anticipated that \$30,000 or more will be available for transfer from Raceway to the HOA for maintenance of the park facilities or what their board deems necessary.

#### Findings of Fact

1. The District was established in January 1996 for the purpose of providing water supply including treatment and distribution. In May 1996, two (2) additional purposes: 1) sewage collection and treatment and 2) developing forests, wildlife areas, parks and recreational facilities were added.
2. The purpose of water supply, including treatment and distribution for domestic, individual and public use was never undertaken by Raceway.
3. On October 13, 1997 Raceway entered into an Agreement with the HCRSD concerning the collection, transportation and treatment of all wastewater generated within the boundaries of Raceway.
4. A dispute between Raceway and HCRSD as to the payments and timing of the

payments was initiated. On December 27, 2012 a Settlement Agreement and Release between Raceway Water Conservancy District, Hendricks County Regional Sewer District and Hendricks County Wastewater, LLC resolved the issues.

5. The HOA accepts responsibility for the parks and recreational areas.
6. IC 14-33-15-1 provides that if there has been a change of circumstances that causes the district to lose its benefit, the district shall be dissolved.
7. IC 14-33-15-5 provides that a district may not be dissolved if it has outstanding financial obligations.

### **Recommendation**

**The Division of Water recommends approval of the proposed dissolution of the Raceway Water Conservancy District.**

Should you have questions concerning the above comments, please contact Terri Price, Project Development Section at 317-234-1081.

## **III. PROPOSED FINDINGS**

1. The Raceway Water Conservancy District (the “District”) was created on January 30, 1996 by order of the Hendricks Circuit Court in Cause Number 32C01-9508-MI-194 for the purpose of providing water supply, including treatment and distribution for domestic, individual and public use.
2. On May 9, 1996, the Hendricks Circuit Court entered an Order adding purpose to the District. The purposes added were: (a) development of forests, wildlife areas, parks and recreation facilities in connection with beneficial water management; and (b) providing for the collection, treatment and disposal of sewage and other liquid wastes.
3. There has been a change of circumstances that causes the District to lose its benefits.
4. Since the District’s establishment, Citizen’s Energy Group (f/k/a Indianapolis Water Company) has provided the water supply, including treatment and distribution for domestic, individual and public use, to the freeholders within the District. (Petition, ¶7a; Testimony of Shrout, p. 3 of this report.)



5. On October 13, 1997, the District entered into a Settlement Agreement and Release (the “Agreement”) with the Hendricks County Regional Sewer District (the “HCRSD”) and the Hendricks County Wastewater, LLC (the “LLC”). The Agreement resolved a dispute as to payments and timing of those payments between the HCRSD and the District. (Petitioners’ Exhibit A, ¶6). The Agreement states, in pertinent part,

#### SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (this “Agreement”) is entered into as of December 27, 2012 by and between Raceway Water Conservancy District (“RWCD”), Hendricks County Regional Sewer District (“HCRSD”) and Hendricks County Wastewater, LLC (LLC). RWCD, HCRSD and LLC shall be collectively referred to as the “Parties” and singly referred to as a “Party”.

#### RECITALS

- A. Pursuant to that certain agreement executed by the Parties on October 13, 1997 (the “Wastewater Service Agreement”), HCRSD agreed to collect, transport and treat all wastewater generated within the boundaries of the geographical area comprising the...District.
- B. As required by the Wastewater Service Agreement, RWCD constructed and installed sewer system improvements to pump and convey wastewater from the District to the sewer system and facilities operated pursuant to an agreement between HCRSD and LLC (the “Wastewater Improvements”).
- C. Also as required by the Wastewater Service Agreement, RWCD oversized the main gravity sewer line through the District, as well as the force main, wet well, valve vault and lift station pumps and controls (collectively the “Oversized Improvements”) to permit sufficient flow to enter RWCD’s system to service the area outside the boundaries of the District.
- D. As compensation for constructing the Oversized Improvements, the Wastewater Service Agreement requires HCRSD to collect a fee from future customers utilizing the Oversized Improvements with said fee due and payable to RWCD (the “Capacity Reimbursement Fees”).
- E. Pursuant to Paragraph 10(b) of the Water Services Agreement, HCRSC has exercised its option to purchase the Wastewater Improvements and the Parties desire to compromise and settle all amounts due, pursuant to the Wastewater Services Agreement.

#### AGREED TERMS

1. Payment by HCRSD. HCRSD shall pay RWCD the total sum of...\$53,991.91... (the “Settlement Payment”) in immediately available funds on the date hereof.
2. Delivery of EDU Certificates. In addition to the Settlement Payment, on the date hereof, HCRSD will deliver to RWCD sixteen paid up Equivalent Dwelling Units certificates (the “EDU Certificates”) for the undeveloped Wynbrooke Lots to be used by future freeholders. The EDU Certificates will be held and given to purchasers of the lots who, upon presentation to the HCRSD, will be entitled to connect to the Wastewater Improvements at no charge.
3. Bill of Sale. RWCD will deliver to HCRSD a bill of sale for the Wastewater Improvements constructed by RWCD pursuant to the Wastewater Service Agreement, including all sewer mains, pipes and conduits, lift stations, manholes, all necessary or incidental auxiliary, or feeder, service mains, pipes and conduits and other facilities, appliances, apparatus and structures convenient or proper for the purpose of rendering sewage disposal service for the area comprising the District.

...

Petitioners' Exhibit A (Petition for the Dissolution of the Raceway Water Conservancy District, Attachment, Exhibit B)

6. On August 20, 2014, the Hendricks Circuit Court referred to the Natural Resources Commission the Petition for Dissolution of the Raceway Water Conservancy District.
7. On October 2, 2014, a public hearing was held pursuant to the Hendricks Circuit Court Order, IC14-33-2-18, IC14-33-15, and Information Bulletin #36 (7<sup>th</sup> Amendment)<sup>1</sup>.
8. IC 14-33-15-1 provides that a district may be dissolved by the same procedure used to establish the district. The petition must set forth the change of circumstances that causes the district to lose the district's benefit.
9. In support of the loss of the District's benefit, the Petition for dissolution states

...

7. The change in circumstances which has caused Raceway to lose Raceway's benefit are as follows:

- a. The purpose of providing water supply, including treatment and distribution for domestic, individual and public use was never fulfilled in that Indianapolis Water Co. (now Citizen's Energy Group) initially provided the public water to the Raceway freeholders and there was never any necessity for Raceway to provide water.
- b. Based on the Agreement, the HCRSD had the option to buy the District's sewer facilities upon the repayment of the District's loans and reimbursement to the District of certain oversizing costs plus interest. The HCRSD has exercised its option and reimbursed the District for its oversizing costs plus interest, therefore the purpose of providing for the collection treatment and disposal of sewage and other liquid waste is lost.
- c. Wynbrooke Homeowner's Association, Inc., the homeowners association representing the District's freeholders, has assumed the responsibility for the parks and recreation facilities within the District, therefore the purpose of development forests, wildlife areas, parks and recreation facilities in connection with beneficial water management is lost.

(Petitioners' Exhibit A, pp. 2, 3)

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<sup>1</sup> Natural Resources Commission's nonrule policy document, Information Bulletin #36 (7<sup>th</sup> Amendment), *Procedural Guidelines for the Interpretations of the Conservancy District Article (IC 14-33)*, posted in the Indiana REGISTER at 20110928-IR-312110566NRA, § VII.C., pp. 8, 9.

10. The Wynbrooke Homeowner's Association boundaries are the same as the District boundaries. (Department Memorandum, p. 7, of this report; Riggs Letter, p. 3, of this report)
11. Residents within the Wynbrooke community pay mandatory Homeowner's Association dues.
12. The Wynbrooke Homeowner's Association has accepted responsibility for maintenance of the parks and recreational facilities within the District.
13. Pursuant to IC 14-33-15-5, a district may not be dissolved if it has bonds or notes outstanding.
14. The District does not have bonds or notes outstanding. (Petitioners' Exhibit B; Testimony of Shrout and Pasotti, p. 3 of this report.)
15. The District's current cash balance is \$61,582.73. (Petitioners' Exhibit B; Testimony of Pasotti, p. 3 of this report.)
16. The District has sufficient funds to pay expenses incurred through the process of dissolution. (Petitioners' Exhibit B; Testimony of Shrout and Pasotti, p. 3 of this report)
17. After payment of necessary expenses incurred in the course of dissolution, the net balance will be, as voted by the District Board, transferred to the Wynbrooke Homeowner's Association. (Riggs Letter, p. 4 of this report; Testimony of Shrout and Pasotti, p. 3 of this report)
18. The District should cease activities, except as needed to satisfy its financial obligations, in order that the court may dissolve the district. (IC 14-33-15-5)

#### **IV PROPOSED RECOMMENDATION**

It is recommended that the foregoing be approved and adopted as the determination and fact finding report of the Natural Resources Commission under IC 14-33-2-18 and IC 14-33-15.

Dated: October 29, 2014

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Jennifer M. Kane, Hearing Officer  
Natural Resources Commission  
Division of Hearings  
Indiana Government Center North  
100 North Senate Avenue, Room N501  
Indianapolis IN 46204-2200  
[jkane@nrc.in.gov](mailto:jkane@nrc.in.gov)  
317.232.0156

A copy of the foregoing was sent to the following:

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